

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**WSOU INVESTMENTS LLC D/B/A
BRAZOS LICENSING AND
DEVELOPMENT,**

Plaintiff,

v.

ZTE CORPORATION

Defendant.

§
§ C.A. NO. 6:20-cv-00487-ADA
§ C.A. NO. 6:20-cv-00488-ADA
§ C.A. NO. 6:20-cv-00489-ADA
§ C.A. NO. 6:20-cv-00490-ADA
§ C.A. NO. 6:20-cv-00491-ADA
§ C.A. NO. 6:20-cv-00492-ADA
§ C.A. NO. 6:20-cv-00493-ADA
§ C.A. NO. 6:20-cv-00494-ADA
§ C.A. NO. 6:20-cv-00495-ADA
§ C.A. NO. 6:20-cv-00496-ADA
§ C.A. NO. 6:20-cv-00497-ADA
§

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant ZTE Corporation (“ZTE”) submit this Notice of Supplemental Authority to notify the Court of new Federal Circuit authority that affects (A) ZTE’s September 16, 2021, Supplemental Briefing on Transfer Under § 1404(a) (Dkt. No. 118),¹ and (B) ZTE’s December 30, 2020, Motion to Stay, Other than Venue Proceedings (Dkt. No. 49). ZTE has attached to this Notice for the Court’s convenience a copy of the Federal Circuit’s slip opinion in *Netflix* issued on October 26, 2021. *See* Ex. A.

This new decision—*In re Netflix, Inc.*, Case 21-190, 2021 WL 4944826 (Fed. Cir. Oct. 26, 2021) (appeal of Eastern District of Texas No. 2:21-cv-00080-JRG-RSP) (“*Netflix*”)—issued on October 26, 2021, which was after the concluded briefing for both the pending Supplemental Briefing on Transfer and the Motion to Stay. *See* Dkt. No. 51 (briefing for the Motion to Stay

¹ Citations throughout here refer to WDTX Case Nos. -00487 through -00497, and specific citations reference to the docket for WDTX Case No. -00487.

concluded on January 13, 2021); and Dkt. No. 120 (briefing for the Supplemental Briefing on Transfer concluded on September 23, 2021). This new authority directly addresses several issues raised in conjunction with ZTE's pending motions and related briefing. ZTE is prepared to address this new authority in any manner that may be warranted, whether at a hearing or through additional briefing at the Court's request.

In particular, the Federal Circuit offered additional guidance relating to the pending Supplemental Briefing on Transfer, and the pending Motion to Stay:

- “Our precedent and Fifth Circuit law entitle parties to have their venue motions prioritized over substantive proceedings in district court. Exhibit A, *1 (citing *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020); and *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003).
- “Delays in resolving transfer motions, coupled with ongoing discovery, claim construction, and other proceedings, frustrate the purpose of § 1404(a) by forcing defendants ‘to expand resources litigating substantive matters in an inconvenient venue while a motion to transfer lingers unnecessarily on the docket.’” Exhibit A, *1 (citing *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015).
- “A stay of merits proceedings is appropriate relief if the district court cannot decide a venue motion quickly enough to avoid burdening the moving party with unnecessary expense and prejudice. We have issued writs of mandamus staying district court proceedings for similar delays in addressing venue motions.” Exhibit A, *2 (citing *In re TracFone Wireless, Inc.*, 848 F.App’x 899 (Fed. Cir. 2021); *In re SK Hynix Inc.*, 835 F. App’x 600 (Fed. Cir. 2021); *In re Google*, 2015 WL 5294800.

ZTE's Motion to Stay, Other than Venue Proceedings (Dkt. No. 49), has been pending since December 2020; and ZTE's Supplemental Briefing on Transfer and the Motion to Stay (Dkt. No. 118) which incorporates several venue issues lingering since December 2020, has been pending since September 16, 2021.

DATED: October 27, 2021

Respectfully submitted,

/s/ Lionel M. Lavenue

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on October 27, 2021.

/s/Lionel M. Lavenue

Lionel M. Lavenue